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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) ATT030073						
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on [redacted]</p> <p>Signature [redacted]</p> <p>Typed or printed name [redacted]</p>								
<table border="1"> <tr> <td>Application Number 10/611,453</td> <td>Filed 06/30/2003</td> </tr> <tr> <td colspan="2">First Named Inventor Gray</td> </tr> <tr> <td>Art Unit 2623</td> <td>Examiner Salce, Jason P</td> </tr> </table>			Application Number 10/611,453	Filed 06/30/2003	First Named Inventor Gray		Art Unit 2623	Examiner Salce, Jason P
Application Number 10/611,453	Filed 06/30/2003							
First Named Inventor Gray								
Art Unit 2623	Examiner Salce, Jason P							

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

[redacted] /Bruce E. Stuckman Reg. No. 36,693/

Signature

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

[redacted] 10/29/2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.

Submit multiple forms if more than one signature is required, see below*.

*Total of

[redacted]

forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: James Gray

Serial No: 10/611,453

Filing Date: 6/30/2003

Confirm No: 1614

Title: SYSTEM AND METHOD FOR ENHANCED HOT KET FUNCTIONALITY

Examiner: Salce, Jason P.

Art Group: 2623

Docket No: ATT030073

Date: 10/29/2008

Honorable Commissioner of
Patents and Trademarks,
Alexandria, Virginia 22313

PREAPPEAL BRIEF REQUEST FOR REVIEW

1. In Office Action mailed on 9/23/2008 regarding the above-captioned patent application, the Examiner rejected claims 23-29 under 35 USC § 101 as being directed to non-statutory subject matter; claims 14-17, 19, 76-79 and 81 under 35 USC § 102 (c) as being anticipated by Blackketter (U.S. Patent No. 7,237,253); claims 18, 49 and 80 under 35 USC § 103 (a) as being unpatentable over Blackketter (U.S. Patent No. 7,237,253) and claims 45-48 and 50 under 35 USC § 103 (a) as being unpatentable over Blackketter (U.S. Patent No. 7,237,253) in view of Field (U.S. Patent No. 6,018,764). Applicant respectfully believes that there is a clear deficiency in the *prima facie* case in support of this rejection and requests review of the allowability of claims 14-19, 45-50 and 76-81 pursuant to the Pre-Appeal Brief Pilot Program.

2. As discussed above, the Examiner rejected claims 23-29 under 35 USC § 101 as being directed to non-statutory subject matter. The applicant respectfully submits there is a clear error in the examiner's rejection. Claims 23-29 were cancelled in a prior response. Applicant respectfully requests that this basis for rejection be withdrawn.

3. As discussed above, claim 14 was also rejected under 35 USC § 102 (c) as being anticipated by Blackketter (U.S. Patent No. 7,237,253). Claim 14 recites in part:

“determining, at the user device and independent of any request by a user of the user device for the alternate content, whether the indicator signal is relevant to a user viewing original content provided by the interactive television service provider’s network; and

responsive to determining the indicator signal is relevant to the user, displaying on a screen an indication that the indicator signal has been received, the indication corresponding to the data representing the indicator form,

wherein subject matter of the alternate content is different from subject matter of the original content; and

wherein the determining is based at least in part on one of the following: a channel providing the original content presently being viewed by the user; choice of content type selected by the user in viewing the original content; and genre of the original content selected by the user.” [emphasis added]

In setting forth the basis for the rejection, the Examiner points to steps 302-310 in Figure 9 for determining an interactive mode based on the received television program. While Blackketter does determine whether an interactive mode is available for a particular channel, Blackketter specifically does not determine whether an indicator signal is relevant to a user, based on the channel being viewed by the user. In particular, Blackketter has no way of knowing whether an indicator signal is relevant to the user or not. Blackketter, merely displays an indicator, whenever the interactive mode is available – and without regard as to whether the interactive mode is relevant or not.

For these reasons, claim 14 and claims 15-19 that depend therefrom are patentably distinct from the prior art. Further, while claim 18 was also rejected based on the Blackketter in combination with Official Notice. The Official notice relied upon by the Examiner does not correct the deficiency in Blackketter discussed above.

3. As discussed above, claim 76 was rejected under 35 USC § 102 (e) as being anticipated by Blackketter (U.S. Patent No. 7,237,253). Claim 76 recites in part:

“determining, at the user device, and independent of any request by a user of the user device for the alternate content, whether the indicator

signal is relevant to a user viewing original content provided by the interactive television service provider's network; and

responsive to determining the indicator signal is relevant to the user, display on a screen an indication that the indicator signal has been received, the indication corresponding to the data representing the indicator form;

wherein subject matter of the alternate content is different from subject matter of the original content; and

wherein the determining is based at least in part on one of the following: a channel providing the original content presently being viewed by the user; choice of content type selected by the user in viewing the original content; and genre of the original content selected by the user.” [emphasis added]

As discussed in conjunction with Claim 14, Blackketter specifically does not determine whether an indicator signal is relevant to a user, based on the channel being viewed by the user. In particular, Blackketter has no way of knowing whether an indicator signal is relevant to the user or not. Blackketter, merely displays an indicator, whenever the interactive mode is available – and without regard as to whether the interactive mode is relevant or not.

For these reasons, claim 76 and claims 77-81 that depend therefrom are patentably distinct from the prior art. Further, while claim 80 was also rejected based on the Blackketter in combination with Official Notice. The Official notice relied upon by the Examiner does not correct the deficiency in Blackketter discussed above.

5. As discussed above, claim 45 was rejected claims 45-48 and 50 under 35 USC § 103 (a) as being unpatentable over Blackketter (U.S. Patent No. 7,237,253) in view of Field (U.S. Patent No. 6,018,764). Claim 45 recites in part:

“a processor coupled to the demultiplexor portion to determine whether the indicator signal is relevant to a user viewing original content over a channel provided by the interactive television service provider's network, and responsive to determining the indicator signal is relevant to the user, displaying on a screen an indication that the indicator signal has

been received, the indication corresponding to the data representing the indicator form;

wherein the determining is independent of any request by the user for the alternate content;

wherein subject matter of the alternate content is different from subject matter of the original content; and

wherein the determining is based at least in part on one of the following: the channel providing the original content presently being viewed by the user; choice of content type selected by the user in viewing the original content; and genre of the original content selected by the user.” [emphasis added]

As discussed in conjunction with Claim 14, Blackketter specifically does not determine whether an indicator signal is relevant to a user, based on the channel being viewed by the user. In particular, Blackketter has no way of knowing whether an indicator signal is relevant to the user or not. Blackketter, merely displays an indicator, whenever the interactive mode is available – and without regard as to whether the interactive mode is relevant or not. While Blackketter was further combined with Field, Field does not correct the deficiency in Blackketter discussed above.

For these reasons, claim 45 and claims 46-50 that depend therefrom are patentably distinct from the prior art. Further, while claim 49 was also rejected based on the Blackketter in combination with Official Notice. The Official Notice relied upon by the Examiner also does not correct the deficiency in Blackketter discussed above.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

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